

Chapter 3

JUVENILE JUSTICE PROCESS AND DECISION MAKING IN KENTUCKY

This section of the report traces the various stages in the juvenile justice process and the decision-making points at each stage. The methodology used in compiling the findings of this section included (i) review of administrative forms and procedural manuals used throughout the system, and (ii) information collected from interviews conducted with personnel from the juvenile justice system. The decision-making points fall into three overarching stages of juvenile justice processing. These stages include: *Intake, Processing, and Disposition*. In the findings below the various stages are described and discussed, identifying the points where discretionary decision-making may occur.

3.1 Intake

The first decision-making point in the juvenile justice process is deciding whether or not to file a complaint. Complaints most frequently originate from juvenile contact with law enforcement officers. However, they may also come from the parent, other citizens, or school officials. Two avenues of complaint derivation are explored in this study: the role of school officials in juvenile justice complaint processes, and the complaint procedures and decision-making options of law enforcement officers.

Complaints against juveniles are often derived from the school. Some complaints are made directly to the Court Designated Worker's Office while others result from a citation or an arrest for offense(s) committed on school property. With the exception of serious offenses such as drug and weapon charges, the school has the option of handling offenses internally. The decision on how an offense is to be handled (internally or externally), in most cases, will be made by the school principal. Most schools utilize the internal process as a means of investigation prior to reporting the crime to external authorities. However, most offenses can be handled completely at the school level.

Players involved in the complaint process in schools include teachers, principals, and School Resource Officers (SRO). Teachers may report discipline problems to the principal according to the school's disciplinary policy. The principal must then make a

decision regarding how the problem is to be handled, including whether to file a complaint. SRO's are law enforcement officers that work in the school system with the responsibilities of identifying and investigating illegal activity, issuing citations and arresting juvenile offenders.

Encounters with law enforcement are the most frequent source of juvenile complaints. Law enforcement officers encounter juveniles on the street and by responding to citizen calls. At the point of contact, law enforcement officers have several options. The officer may simply interview the juvenile and complainant and then release, interview the juvenile and complainant and give a warning, interview the juvenile and complainant and give a citation, or investigate and take the juvenile into custody. Both citation and arrest will result in a complaint being filed against the juvenile.

All juvenile complaints, regardless of the point of origin, are to be taken by a Court Designated Worker (CDW). The CDW program operates under the Administrative Office of the Courts, and has three roles: processing complaints, hold a preliminary inquiry, and arrange diversion agreements. The first of the CDW's duties is to process both status and public offense complaints filed against juveniles. Complaints arrive at the CDW's office from three sources. Citizens and school officials can file a complaint directly with the CDW. Additionally, a CDW is on-call twenty-four hours a day to take complaints from law enforcement officers. The CDW role is also to assist with the custody process (detention or release); this is a primary function of staff after regular office hours.

Once a juvenile complaint is received, the CDW holds a preliminary inquiry meeting with the juvenile and the parent(s) or guardian. At the preliminary inquiry meeting, basic information is collected including: juvenile's name, address, date of birth, school where the juvenile is enrolled, current grade in school, counties in which the juvenile has lived, parents' name(s), and parents' place(s) of employment. If a charge is filed, prior complaints are checked automatically. If the youth enters into a diversion agreement, a release of information form is signed to allow exchange between the CDW and other agencies.

3.2 Processing

The first step in processing is for the CDW to send all public offense complaints to the prosecuting attorney for the determination of probable cause. After probable cause is established the CDW holds a preliminary inquiry. Following the preliminary inquiry a recommendation is given to the county attorney for diversion eligible cases only.

Eligibility is based on statewide criteria, and is determined using AOC-JW-40, the Preliminary Inquiry Formal/Informal Processing Criteria and Recommendations form. Kentucky Revised Statute (KRS) 605.030 limits a juvenile's eligibility for diversion to three completed diversions for status and non-felony public offense complaints. In at least one county in this study, juveniles are allowed only one completed diversion for a public offense; any subsequent charge is petitioned. Throughout the state, two completed diversions are considered standard. If the juvenile is not eligible for diversion and probable cause is established, the prosecuting attorney proceeds with prosecution.

Diversion

The second role of the CDW is to create and supervise diversion programs for eligible juvenile offenders. Diversion programs do not require an admission of guilt and successful diversions do not result in a court record. The diversion agreement made between the CDW office and the juvenile is intended to address the specific offense committed and the needs of the offender. A diversion program typically includes elements of education, prevention, and accountability. However, there are no "template" programs; each program is individually constructed. The time allotted for a diversion agreement can vary but generally does not exceed six months.

If a juvenile fails to appear for the diversion conference and does not wish to participate in the program a petition will be filed with the court clerk. Additionally, if the terms of the diversion agreement have not been met, an unsuccessful diversion conference will be held. Following this conference, the CDW will evaluate the situation and decide whether the diversion will be extended or if a petition will be filed.

Petition

Once a petition reaches the prosecuting attorney's office the juvenile case file is reviewed. A conference hearing is held in order to establish legal evidence--this generally includes interviews with concerned persons such as eyewitnesses or the investigating law enforcement officer. Following the conference, a decision is made on whether or not to offer a plea bargain. If a plea bargain is considered, the terms and conditions of the offer are established.

A juvenile case file consists of a copy of the CDW criteria checklist for the current offense, the current petition (as well as the arrest slip or warrant) and a written account of the juvenile's prior record. Each document provides specific information to be used in the prosecution of the case. The petition form (AOC-JV-1) outlines the offense, the grounds on which the complaint was made, the residence of the juvenile, the parent's names and places of residence, and the name and address of the complainant. The arrest slip or warrant is included as evidence of the allegations. CDW files do not appear in the Court of Justice's computer record system.

It was learned from the interviews that the information contained in case files is treated differently in some jurisdictions. For instance, in some areas, the juvenile's case file includes a list of previous petitions including the petition number, date, charge, and how the case was handled. In the juvenile's case file the number of prior court hearings are noted. These prior petitions include petitions from family court in which charges of dependency, abuse or neglect by a family member were heard. It is the duty of all court workers to investigate what these prior petitions were. However, in other cases the number of prior petitions may be used in making a decision on that particular juvenile's case. Additionally, if the juvenile admits guilt to the police or the CDW, it will be included in the petition.

Other routine information on the juvenile that may be requested on a case by case basis and dependent on the nature of the charge may include school records, medical records and competency tests. The defense attorney usually initiates requests for competency tests. The school records are considered important to assessing how well the juvenile is performing in other areas of his/her life and will indicate if there are problems

associated with the juvenile's school attendance or behavior. The competency tests are used to determine the ability of the juvenile to understand the court proceedings and to note whether the juvenile fully understands the nature of the crime with which he or she was charged.

Arraignment

If the prosecuting attorney chooses to prosecute a case against a juvenile, the juvenile is notified of the date and time of their first court appearance. The first court appearance is the arraignment. At the arraignment, the prosecuting attorney enters the charges against the juvenile into the court record and the juvenile then enters a plea. After advising the juvenile of their constitutional rights, the judge has three roles in the arraignment process. The judge must determine if a public defense attorney is needed, evaluate the juvenile's case to determine if an informal adjustment is applicable, and determine if pre-trial detention is warranted.

The interviews showed that judges are concerned that defense council represents all juveniles. If the juvenile does not have a defense attorney, the judge will assess the family's financial situation to determine if a public defender is needed. Once financial need is determined, a public defender will be assigned to the juvenile's case. Public defenders are present during court proceedings and may be asked by the judge to talk with the youth prior to or following the arraignment hearing. The system is a vertical system, meaning the attorney assigned will follow the case through the system.

Informal Adjustment

It was found that, in most cases, the judge would offer an informal adjustment. An informal adjustment is typically some form of community service work or treatment program, and does not require the juvenile to admit guilt. The public defender generally advises the juvenile on the offer of an informal adjustment. If the juvenile accepts the informal adjustment, the terms are assigned and the case is re-entered on the docket for a later date when the service work is expected to be complete. The juvenile will be given a form to be completed by the assigned agency, which must be filed with the court clerk by the specified date. If the terms of the informal adjustment are met, then the case will be

dismissed at the next court appearance. However, failure to complete the terms of the informal adjustment will result in formal prosecution of the case.

Pre-Trial Detention

The determination of whether or not the juvenile should be detained is based on prior record, how long ago the last offense occurred, nature of current offense, and the relative resources available to the juvenile if released. Following a detention hearing, pursuant to the guidelines appearing in KRS chapter 610, the judge makes a decision on the necessity of pre-adjudicative detention. If the juvenile is to be released, the judge must also decide upon the conditions of the release. The judge may consider rules of the home such as curfew, the use of house arrest, and home incarceration as alternatives to pre-trial detention.

Plea Bargain

In the event that the court does not offer an informal adjustment or the juvenile is not successful at completing the terms of their informal adjustment, the prosecuting attorney must make a decision on whether a plea bargain will be offered. Interviews indicated that this decision is based on offers made to juveniles in similar cases as well as the type of alleged offense. If a plea bargain is to be offered, the prosecuting attorney will contact the juvenile or the defense attorney. At this point, the defense attorney will discuss the offer with the juvenile and decide whether to accept the plea bargain or go ahead with adjudication proceedings. Cases usually go for adjudication if either the client or the defense attorney believes that the witness account is not consistent with what actually took place. When a juvenile case goes to court for adjudication there is a risk of receiving the maximum penalty. However, refusing the plea bargain also leaves the possibility of the juvenile being freed of all charges.

Formal Adjudication

Juvenile cases will move into a formal adjudication phase after all informal processes have been exhausted, and in cases where a plea bargain cannot be reached or the juvenile's offenses do not qualify for informal processes. Pursuant to KRS 610.060

juvenile adjudications are closed proceedings and court hearings involving juveniles are open only to the juvenile and their parent or guardian, the defense and prosecuting attorneys, and the victim(s) of the alleged offense.

In the adjudication phase, it is the judge's role is to oversee the proceedings, as juvenile cases are not heard before juries. Therefore, after the presentation of the case by both the prosecution and the defense it is the duty of the judge to rule on the determination of guilt. In cases where the juvenile is adjudicated delinquent (i.e. found responsible for the offense), it is then up to the judge to determine the sentence or disposition for the offense. It was suggested by the interviews that because juvenile cases are closed hearings and not privy to public opinion that the decision making processes could have either a positive or negative affect upon DMC.

3.3 Disposition

When a juvenile has been adjudicated delinquent, a worker from the Department of Juvenile Justice (DJJ) prepares a Pre-Dispositional Investigation report (PDI). The scope of the PDI, as outlined in KRS 610.100, is very broad. The investigation encompasses a wide range of information including the juvenile's criminal history, family background, school and employment records, dependency and neglect history, and any status offenses committed by the juvenile. The information is collected through interviews with the juvenile and their family members, the administration of two assessment scales: community risk assessment and a needs assessment, as well as any information accessible to DJJ and the Cabinet for Families and Children. Additionally, the report contains a narrative based on the worker's perception of family functioning. The final PDI report is submitted with appropriate recommendations for appropriate placement and treatment options for the delinquent juvenile.

The community risk assessment focuses on the current offense, the offending history of the juvenile, and behaviors of the juvenile associated with risk to the community. The needs assessment is two-part, consisting of both an individual needs assessment and a family needs assessment. The individual-need section assesses the juvenile's relationships, support systems, and behaviors. The family-need section assesses the resources available to the family as well as limitations to family support.

The amount of supervision or level of treatment needed by the juvenile is determined by adding the individual needs assessment score (with a possible score of 34) with the family score (with a possible score of 23). A score of less than 19 places the juvenile in the low need category. A score between 20 and 36 indicates medium need, and a score of 37 and above indicates a high level of need.

The prosecuting attorney, the defense attorney, and the judge review the PDI report. The judge will make a ruling on the disposition with recommendations from both the prosecuting attorney and the defense attorney. The primary options for disposition include, but are not limited to, court supervised probation, commitment of the juvenile to the DJJ for probation, and placement in a juvenile facility. Following the disposition ruling, the DJJ will prepare a placement referral package that includes a classification report that determines the level of supervision needed. For juveniles committed to DJJ, the department assumes the responsibility for supervising probation and determining what juvenile facility is most appropriate for the treatment of the juvenile in question.

3.4 Discretion

Within the formalized procedures of juvenile justice processing, there exists a number of points where discretionary decision-making may still be used. The decision to file a complaint against a juvenile—whether by the police, school, or citizen—is the first of several points where discretion appears. However, each major stage in the process is subject to discretionary decision-making; this includes intake, processing, and disposition. Figure 3.1 summarizes the areas of discretion identified at specific decision-making points throughout the system.

Two decisions are possible relative to pre-trial detention: detention prior to arraignment and detention after arraignment. State statutes specify criteria for which cases pre-trial detention is necessary, however, the limitations of its use are not concrete and are left to the judge's discretion. Additionally, a juvenile that is not detained prior to the arraignment can be detained following that proceeding or at any other point in the adjudication process.

Figure 3.1. Areas of Discretion at Juvenile Justice Decision-Making Points

Decision Making Point	Areas of Discretion
INTAKE	
Filing a Complaint	Decision to make a formal complaint
Pre-Trial Detention	Decision to detain before arraignment Decision to detain after arraignment
Diversion	Creation of a diversion agreement
PROCESSING	
Petition	Decision to pursue complaint or to dismiss Decision to override diversion eligibility Decision to pursue charges formally Decision to pursue transfer to adult court
Informal Adjustment	Decision to offer informal adjustment Creation of terms of informal adjustment
Adjudication	Decision to offer a plea bargain Creation of terms of plea bargain Decision to prosecute Determined to be delinquent or not
DISPOSITION	
Commitment	Decision to commit to DJJ
Confinement	Determination of the length of confinement Determination of the type of placement

A juvenile's eligibility for diversion before formally entering the juvenile justice system is based on formal criteria, although the terms created for diversion programming by the CDW office are discretionary. Each diversion program is designed to meet the individual needs of the juvenile and address the individual offense, and are therefore subject to decisions made by the CDW assigned to the juvenile's case. Once the complaint is filed with the court clerk and reviewed by the prosecuting attorney, it can be dismissed for lack of probable cause. In addition, to prosecutorial override of a complaint, judicial override is also possible. Meeting eligibility criteria for diversion through the Court Designated Worker Program does not always result in a diversion from formal prosecution. There exists a possibility of a prosecutorial override. This means that the CDW has submitted a criteria checklist to the prosecuting attorney's office indicating that the juvenile is eligible for diversion, but the prosecutor has chosen to go ahead with

formal charges. It is also at the prosecutor's discretion to pursue adult waivers that are not automatic by law.

Informal adjustments, as an alternative to formal adjudication, are at the discretion of the presiding judge and are handled entirely by the court. The judge decides the terms of community service and/or treatment, and the court is solely responsible for the supervision of the juvenile receiving an adjustment.

Discretion during the processing stage continues throughout the adjudication process. Once a juvenile is formally charged, the prosecutor has the option of creating terms for and offering a plea bargain. The decision to prosecute brings about another point where some discretion is found, namely the determination by the judge whether or not the juvenile was delinquent. Two decision-making points were identified as open to discretion in the disposition process. If a juvenile is found to be delinquent, the judge can commit him/her to the Department of Juvenile Justice. Secondly, there is a decision made regarding whether or not the juvenile will be confined. If a juvenile is to be confined, the type of placement and length of confinement must also be determined. These decisions are at the discretion of the judge, and are based on recommendations made by the DJJ worker responsible for conducting the pre-dispositional needs and risk assessments.